U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: SRC 02 252 50493 Office: TEXAS SERVICE CENTER Date: SEP 30 2004

IN RE: Petitioner: [redacted]
Beneficiary

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

SELF-PETITIONER

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to § 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a corporation organized in the State of North Carolina that implements high performance computer networks in federal, state and municipal organizations, and commercial businesses. The petitioner claims that it is the parent company of the beneficiary's foreign employer, incorporated in the Bahamas with international "offices or subsidiaries in India and Hungary." The petitioner now seeks to employ the beneficiary as a special assistant to its president for three years.

The director denied the petition concluding that the beneficiary was not employed abroad nor would she be employed by the U.S. entity in a qualifying capacity, and determined that a qualifying relationship did not exist between the foreign and U.S. corporations.

On appeal, the petitioner contends that the beneficiary has been employed as the manager of the foreign company's India office, and would be employed as "a key manager" by the U.S. entity. The petitioner also claims that as an "off-shore company," the beneficiary's foreign employer is registered in the Bahamas by "prominent and respected attorneys" or agents, who maintain all business records and reporting requirements. The petitioner submits a letter from the foreign company's agent, which counsel states confirms that the petitioner is the "beneficial owner" of the beneficiary's foreign employer, and therefore, the parent company of the foreign organization. The petitioner submits an additional letter in support of the appeal.

To establish L-1 eligibility, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). Specifically, within three years preceding the beneficiary's application for admission into the United States, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

(i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.

(ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

(iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

(iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education,

training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The AAO will first address the issue of whether the beneficiary was employed abroad in a primarily managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

> The term "managerial capacity" means an assignment within an organization in which the employee primarily-
>
> (1) Manages the organization, or a department, subdivision, function, or component of the organization;
>
> (2) Supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
>
> (3) Has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) if another employee or other employees are directly supervised; if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
>
> (4) Exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), provides:

> The term "executive capacity" means an assignment within an organization in which the employee primarily-
>
> (1) Directs the management of the organization or a major component or function of the organization;
>
> (2) Establishes the goals and policies of the organization, component, or function;
>
> (3) Exercises wide latitude in discretionary decision-making; and
>
> (4) Receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

In a May 29, 2002 letter submitted with the nonimmigrant petition, the petitioner stated that the beneficiary has served on the staff of the foreign company's president for the past two years. The petitioner explained

that in this position, the beneficiary has been "assigned to special projects of importance to the [p]resident, particularly with regard to negotiations with the Ministry of Communications, Government of India, and our service requirements in India." The petitioner further explained that the beneficiary has also served as the managing secretary in senior management meetings, and has been responsible for reviewing and evaluating all proposals to India's Ministry of Communications. The petitioner stated that the beneficiary has also acted as a liaison between the foreign company's president and government-owned Indian companies. The petitioner submitted a copy of the beneficiary's diploma from the University of Delhi, reflecting the beneficiary's Bachelor of Acts degree.

The director subsequently issued three requests for evidence on October 15, 2002, December 2, 2002, and January 21, 2003. The director, however, did not specifically request information pertaining to the beneficiary's employment abroad.

In a decision dated March 25, 2003, the director addressed the beneficiary's duties as the assistant to the foreign company's president, and stated that "[t]hese job descriptions do not establish these foreign duties of the beneficiary indeed can be considered as inherently managerial and/or executive in nature." The director noted that the record does not demonstrate that the beneficiary is directly overseeing any subordinate employees, or is engaged in traditional managerial duties. The director therefore concluded that the beneficiary has not been employed abroad in a primarily managerial or executive position for one year.

On appeal, the petitioner states that the beneficiary has been managing all operations and employees of the Delhi, India office. The petitioner explains that the beneficiary has also authored many of the foreign company's proposals to the Ministry of Communications, and has not simply "evaluated proposals" as previously stated. The petitioner also states that during meetings with Indian officials, the beneficiary represented the foreign company as a manager and an agent of the company's president. The petitioner contends that the beneficiary has therefore been employed abroad in a qualifying capacity.

On review, the record does not establish the beneficiary's employment by the foreign company in a primarily managerial or executive capacity. When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). As required in the regulations, the petitioner must submit a detailed description of the executive or managerial services to be performed by the beneficiary. *Id.*

The petitioner has provided a vague and nonspecific description of the beneficiary's job duties that fails to demonstrate what the beneficiary did on a day-to-day basis. For example, the petitioner states that the beneficiary manages the "complete India operations including staff employed there," drafts proposals, and acts as a liaison with government officials. The petitioner did not, however, explain the foreign company's organizational hierarchy or confirm the employment of subordinate employees that the beneficiary manages. Additionally, the petitioner did not provide a description of the foreign company's "complete" operations, which would explain the beneficiary's daily responsibilities. The actual duties themselves reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Additionally, the fact that the beneficiary actually drafts the foreign company's proposals, rather than merely evaluates the proposals, does not demonstrate employment in a qualifying capacity. The petitioner has not

specifically explained the content of the proposals drafted by the beneficiary. Therefore, it is difficult to ascertain the significance of the beneficiary's responsibility of drafting the proposals on her employment as a manager or executive. Regardless, it would appear that, as the author of the company's proposals, the beneficiary is actually performing a function of the foreign business, rather than managing employees who would be responsible for performing the business' non-qualifying operations. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

Based on the foregoing discussion, the AAO cannot conclude that the beneficiary was employed abroad in a primarily managerial or executive capacity. For this reason, the appeal will be dismissed.

The AAO will next address whether the beneficiary would be employed by the U.S. entity in a primarily managerial or executive capacity.

On the nonimmigrant petition, the petitioner stated that the beneficiary's position in the United Stated would be as "special assistant to the president." In the accompanying May 2002 letter, the petitioner stated that the beneficiary would be a senior staff specialist in the petitioner's projects division, and would assist the petitioning organization in launching its telecom service, "Voice over Internet Protocol," in India and the United Kingdom. The petitioner also explained that as a "key employee" in the foreign company, the beneficiary has a "unique breath [sic] of knowledge" and expertise in understanding the communications environment in India and the Indian government.

In the director's October 2002 request for evidence, the director noted that the petitioner had not yet demonstrated that the beneficiary would be employed in the U.S. in a primarily managerial or executive capacity. The director asked that the petitioner submit an organizational chart for the U.S. corporation reflecting all employees and position titles and job requirements, and all federal and state corporate income tax returns since the company's inception. The director also requested that the petitioner explain how the beneficiary will be employed in a qualifying capacity.

In a response dated October 28, 2002, the petitioner stated that the beneficiary's responsibilities in the position of "Director, International Programs-India" would include the following: (1) advising the president on international business projects; (2) interpreting contracts; (3) managing international customer service and support in India; and (4) managing contracts with other corporations. The petitioner also stated that the beneficiary would direct a new project in India, which would establish PC-to-phone, long distance, and Internet services between the U.S. and India. The petitioner submitted a U.S. organizational chart, in which the beneficiary was also identified as "Director, International Programs – India," subordinate to the petitioner's chief executive officer and the president. The chart did not identify any employees subordinate to the beneficiary, and reflected eight additional employees who would also report to the company's chief executive officer and the president.

In her decision, the director noted an inconsistency in the three different position titles given to the beneficiary – special assistant, senior staff specialist, and director. The director also noted the lack of specificity in the record regarding the beneficiary's responsibility of directing " a new project" in India, and stated that the beneficiary's precise job duties and role in this project are unclear. In addition, the director noted discrepancies in the eight employees identified on the organizational chart compared to the petitioner's

original claim on the petition of employing twenty-four employees. The director stated that the organizational chart reflects eight individuals in managerial or executive positions, and further stated that "[i]t is not at all the norm in corporate America to have over fifty percent of one's employees working in a managerial or executive position a preponderance of the time." The director concluded that the beneficiary's responsibilities of advising on business projects and interpreting contracts are not typical of one employed in a managerial or executive capacity. The director further determined that the beneficiary would not be managing or directing a department, subdivision, function, or component of the U.S. organization, and would not supervise or control the work of other supervisory, professional, or managerial employees who would relieve the beneficiary from performing the services of the business. Accordingly, the director denied the petition.

On appeal, the petitioner rejects the director's finding that the beneficiary would not be employed as a manager. The petitioner states that the beneficiary would perform the following job duties:

> She will supervise and control the work of other supervisory, professional, or managerial employees with particular emphasis on the companies' [sic] overseas operations. She will have the authority to hire or fire employees both in the United States and the staff in our additional overseas offices, as they come on line. Being a special assistant to the [p]resident means that she works closely with the [p]resident in making managerial decisions in the company as they relate to her area of expertise.
>
> As [the petitioning organization] opens offices internationally and domestically to market and service [its] product, [the beneficiary] will act as a key member of the team in determining the location and directing the management of these offices. She will be interviewing and employing marketing staff and other employees deemed necessary, to the direct operations of our overseas offices. She has unique experience in this area, as she already has performed this within our India operations.

The petitioner also addressed the discrepancy in its number of employees, which the director raised in her decision. The petitioner stated that as a "dynamic" enterprise, the petitioning organization "does not always have a form fit to corporate norms." The petitioner explained that its personnel levels fluctuate between fifteen and fifty employees, of which some may be employed full-time while others are contractual employees. The petitioner further explained that the number of employees is dictated by the nature of the project. The petitioner stated that it presently has thirty-one employees in three offices throughout the United States.

On review, the petitioner has not demonstrated that the beneficiary would be employed by the U.S. entity in a qualifying capacity. Again, when examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii).

In the present matter, rather than providing a specific description of the beneficiary's job duties, the petitioner generally paraphrased the statutory definition of managerial capacity. *See* section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A). For instance, on appeal, the petitioner states that the beneficiary "will supervise and control the work of other supervisory, professional, or managerial employees," and "will have the authority to hire or fire employees." Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden

of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

Additionally, the petitioner's conclusory assertions regarding the beneficiary's job duties are unsupported by the record. Although the petitioner states that the beneficiary would supervise managerial, professional, or supervisory employees, the petitioner has not provided any evidence of the current or proposed employment of any subordinate employees. In fact, the organizational chart does not identify any positions reporting to the beneficiary. Moreover, there is no evidence in the record, such as contractual agreements, which would support the petitioner's claim that it has varying numbers of contractual employees. Furthermore, even if it were established that the petitioner used independent contractors, there is no indication that the beneficiary would maintain authority over their performance. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. at 193.

Moreover, as already noted by the director, the petitioner's inconsistency in the beneficiary's proffered position creates doubt as to the beneficiary's actual role in the U.S. organization. The petitioner repeatedly referred to the beneficiary's position as the special assistant to the president, senior staff specialist, and director. Although addressed by the director in her decision, the petitioner neglected to provide an explanation on appeal of the inconsistencies or the constantly evolving position. The petitioner is obligated to clarify the inconsistent and conflicting testimony by independent and objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In response to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to Citizenship and Immigration Services (CIS) requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

Based on the foregoing, the beneficiary would not be employed by the U.S. entity in a primarily managerial or executive capacity. Again, the appeal will be dismissed for this additional reason.

Lastly, the AAO will address the issue of whether the petitioner has demonstrated the existence of a qualifying relationship between the U.S. and foreign organizations.

The pertinent regulations at 8 C.F.R. § 214.2(l)(ii) define the term "qualifying organization" and related terms as follows:

> (G) *Qualifying organization* means a United States or foreign firm, corporation, or other legal entity which:
>
> (1) Meets exactly one of the qualifying relationships specified in the definitions of a parent, branch, affiliate or subsidiary specified in paragraph (l)(1)(ii) of this section;

(2) Is or will be doing business (engaging in international trade is not required) as an employer in the United States and in at least one other country directly or through a parent, branch, affiliate or subsidiary for the duration of the alien's stay in the United States as an intracompany transferee; and,

(3) Otherwise meets the requirements of section 101(a)(15)(L) of the Act.

* * *

(I) *Parent* means a firm, corporation, or other legal entity which has subsidiaries.

(J) *Branch* means an operating division or office of the same organization housed in a different location.

(K) *Subsidiary* means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

(L) Affiliate means

(1) One of two subsidiaries both of which are owned and controlled by the same parent or individual, or

(2) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

The petitioner indicated on the nonimmigrant petition that it is the parent company of the beneficiary's foreign employer. In the October 2002 request for evidence, the director requested that the petitioner provide evidence of the stock ownership of the U.S. company, all federal and state corporate tax returns, and a copy of the petitioner's articles of incorporation. The director subsequently requested in December 2002 that the petitioner submit evidence of the ownership of the beneficiary's foreign employer.

In its October 2002 response, the petitioner provided two stock certificates issued by the U.S. organization, which reflected stock ownership by two individuals. The petitioner explained that it had not previously filed a corporate tax return, as the U.S. organization originally existed as a sole proprietorship until its incorporation in November 2001. The petitioner did not respond to the director's December 2002 request. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

In her decision, the director concluded that the petitioner had not established a qualifying relationship between the U.S. and foreign entities. The director noted that the sole piece of evidence in the record relating to a corporate relationship is a letter from the foreign company's registered agent in the Bahamas, in which

the agent "confirm[s] that the beneficiary owner of [the foreign company] is [the petitioning organization] of Lumberton, North Carolina, USA." The director notes that the petitioner did not provide an explanation as to the qualifications of the agent, and therefore, stated that "[the letter] can only be afforded little weight." Consequently, the director denied the petition.

On appeal, the petitioner states that the beneficiary's foreign employer is an International Business Corporation, or an "off-shore company," that has a registered office in the Bahamas, yet does not do business in its country of incorporation. The petitioner explains that the foreign company is set up as a holding company, and is maintained by attorneys, or registered agents, in the Bahamas. The petitioner asserts that the agent's letter "clearly states that [the foreign company's] registered office is in their premises and that they are the registered agents of [the foreign company.]" The petitioner states that the letter confirms that the petitioner is the "beneficial owners [sic]" of the beneficiary's foreign employer, and therefore, the foreign company is wholly owned by the petitioner. The petitioner provides an additional letter on appeal from two directors of the foreign company, in which the directors "confirm" that the petitioning organization is the beneficial owner of the foreign company.

On review, the petitioner has not demonstrated the existence of a qualifying relationship between the foreign and U.S. companies.

The regulations and case law further confirm that the key factors for establishing a qualifying relationship between the U.S. and foreign entities are ownership and control. *Matter of Siemens Medical Systems, Inc.* 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982); *see also Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988) (in immigrant visa proceedings). In the context of this visa petition, ownership refers to the direct and indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology International,* 19 I&N Dec. at 595.

The instant record does not clearly establish the relationship between the U.S. petitioning company, the Bahamian company (which the petitioner claims is the beneficiary's foreign employer), and the Delhi, India office (the actual work location of the beneficiary). The director correctly notes that the agent's letter is insufficient to establish a corporate relationship between the petitioner and the Bahamian off-shore company. The petitioner indicates on appeal that the foreign company's agent registers and maintains all records of the foreign entity as an off-shore company. If true, the agent should be able to produce documentation for the petitioner demonstrating the establishment and ownership of the corporation. Additionally, there is nothing in the record confirming the petitioner's claim that as a "beneficial owner" the petitioner would exercise the legal right to possess the foreign company's assets or to direct its management and operations as required in the regulations. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. at 193.

The term "beneficial owner" is defined as "a right or expectancy in something as opposed to legal title to that thing." *Black's Law Dictionary* (8th ed. 2004). In addition, the term "beneficial interest" is defined as "a corporate shareholder who has the power to buy or sell the shares, but is not registered on the books as the owner." *Id.* By virtue of these definitions, it is clear that the U.S. petitioner was not the legal, registered owner of the shares at the time the petition was filed.

While not specifically addressed by the director in the decision, the petitioner also failed to establish the critical element of control. While the AAO acknowledges that the appointment of a manager to incorporate and manage a business is standard procedure when incorporating an International Business Corporation in the Bahamas, the petitioner failed to demonstrate that the U.S. entity would exercise control over the key decisions and functions of the Bahamian company. A petitioning company must disclose all agreements relating to the voting of shares, the distribution of profit, the management and direction of the subsidiary, and any other factor affecting actual control of the entity. *See Matter of Siemens*, 19 I&N Dec. at 365. Without full disclosure of all relevant documents, the AAO is unable to determine the elements of ownership and control. Since the petitioner failed to provide any evidence of an agreement between the U.S. entity and the nominee shareholders despite the request of the director, it is impossible to determine that the U.S. entity exercised control over the Bahamian entity.

The petitioner has also failed to demonstrate a relationship between the foreign company registered in the Bahamas and its claimed office in Delhi, India. The petitioner maintains that the beneficiary is employed in its Delhi office. The petitioner, however, cannot simply assert that the beneficiary's foreign employer maintains offices, subsidiaries, and satellite offices in various countries, and contend that the beneficiary is employed at one of these related offices. There is no evidence in the record to establish any corporate relationship between the Bahamian company and the office in which the beneficiary claims to be employed. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Id.*

The petitioner has failed to establish the essential element of a qualifying relationship between the petitioner and the beneficiary's foreign employer. For this reason, the appeal will be dismissed.

Beyond the decision of the director, the minimal documentation of each company's business operations raises the issue of whether either the petitioner or the foreign company is doing business in the United States or abroad. Specifically, under the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(G)(2) a petitioner must demonstrate that it is engaged in the regular, systematic, and continuous provision of goods or services and does not represent the mere presence of an agent or office in the United States. The petitioner has not supplied evidence, such as contracts, proposals, or invoices evidencing its claim that the U.S. and foreign companies are providing high performance telephone networks to business and governmental agencies in the United States and abroad. In the absence of specific evidence, it cannot be determined that either company is doing business in their respective countries. For this additional reason, the appeal will be dismissed.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, that burden has not been met. Accordingly, the director's decision will be affirmed and the petition will be denied.

ORDER: The appeal is dismissed.